

§ 1779.48

feasibility of the facility and the financial feasibility analysis contains an accurate projection of the usage, revenues, and expenses of the facility.

(b) *Insufficient information.* When the lender or Agency has insufficient information to determine the borrower's repayment ability, an independent feasibility analysis is required.

§ 1779.48 Collateral.

(a) *Lender responsibility.* The lender is responsible for obtaining and maintaining proper and adequate collateral to protect the interest of the lender, the holder, and the Government.

(b) *Type of collateral.* Collateral must be of such a nature that repayment of the loan is reasonably ensured when considered with the integrity and ability of project management, soundness of the project, and the borrower's prospective earnings. The collateral may include, but is not limited to, the following: General obligation bonds, revenue bonds, pledge of taxes or assessments, assignment of facility revenue, land, easements, rights-of-way, water rights, buildings, machinery, equipment, accounts receivable, contracts, cash, or other accounts or assignments of leases or leasehold interest.

(c) *Separate collateral.* All collateral must secure the entire loan. The lender will not take separate security to secure only the unguaranteed portion of the loan. The lender will not require compensating balances or certificates of deposit as a means of eliminating the lender's exposure on the unguaranteed portion of the loan.

§§ 1779.49–1779.51 [Reserved]

§ 1779.52 Processing.

(a) *Preapplications.* (1) The preapplication package may be submitted either alone or the necessary information may be submitted simultaneously with the application. The preapplication package will contain:

(i) An Application for Federal Assistance on a form provided by the Agency (available in any Agency office);

(ii) State intergovernmental or other type review comments and recommendations for the borrower's project (clearinghouse comments, if applicable);

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(iii) Supporting documentation necessary to make an eligibility determination such as financial statements, audits, copies of organizational documents, or existing debt instruments; and

(iv) Documentation of lender eligibility in accordance with § 1779.27.

(2) If the Agency determines that the project may meet requirements and is likely to be funded, the lender must submit a complete application if it has not previously submitted one.

(b) *Applications.* Contents of application package:

(1) Application for Loan and Guarantee on a form prescribed by the Agency (available in any Agency office);

(2) Proposed loan agreement;

(3) Environmental Report. (See RUS Bulletin 1794A–602; this document is available in any Agency State Office or online at <http://www.usda.gov/rus/water/ees/index.htm>);

(4) Preliminary architectural or engineering report (PER);

(5) Cost estimates;

(6) Appraisal reports (as appropriate);

(7) Credit reports (as appropriate);

(8) Financial feasibility analysis and report (as appropriate) if not included in PER; and

(9) Any additional information required.

§ 1779.53 Evaluation of application.

If the Agency determines that the borrower is eligible, the proposed loan is for an eligible purpose, there is reasonable assurance of repayment ability, sufficient collateral and equity exists, the proposed loan complies with all applicable statutes and regulations, the environmental impact analyses is complete, and adequate funds are available, the Agency will provide the lender and the borrower with the Conditional Commitment for Guarantee, listing all conditions for the guarantee. Applicable requirements will include the following:

(a) Approved use of guaranteed loan funds (source and use of funds);

(b) Rates and terms of the loan;

(c) Scheduling of payments;

(d) Number of customers;

(e) Security and lien priority;

(f) Appraisals;

- (g) Insurance and bonding;
- (h) Financial reporting;
- (i) Equal opportunity and non-discrimination;
- (j) Mitigation measures for environmental issues (if necessary);
- (k) Americans with Disabilities Act;
- (l) By-laws and articles of incorporation changes; and
- (m) Other requirements necessary to protect the Government.

§§ 1779.54–1779.58 [Reserved]

§ 1779.59 Review of requirements.

(a) *Lender and borrower.* The lender and borrower must complete and sign the Acceptance of Conditions and return a copy to the Agency as soon as possible. Notwithstanding the preceding sentence, if certain conditions cannot be met, the lender and borrower may propose alternate conditions for Agency consideration.

(b) *Cancellation.* If the lender decides at any time after receiving a Conditional Commitment for Guarantee that it no longer wants a guarantee, the lender must immediately advise the Agency of the cancellation.

(c) *Modifications.* The lender agrees that once the Conditional Commitment for Guarantee is issued and accepted by the lender and borrower, it will not be modified as to the scope of the project, overall facility concept, project purpose, use of proceeds, or other terms and conditions.

§§ 1779.60–1779.62 [Reserved]

§ 1779.63 Conditions precedent to issuance of the Loan Note Guarantee.

The Loan Note Guarantee will not be issued until:

- (a) The lender certifies that:
 - (1) No changes have been made in the lender's loan conditions and requirements since the issuance of the Conditional Commitment for Guarantee except those approved in the interim by the Agency in writing.
 - (2) All planned property acquisition has been completed and all development has been substantially completed in accordance with plans, specifications, and applicable building codes. No costs have exceeded the amounts approved by the lender and the Agency.

(3) Required insurance is in effect.

(4) The loan has been properly closed and the required security instruments have been obtained on any after-acquired property that cannot be covered initially under State statutory provisions.

(5) The borrower has marketable title to the collateral then owned by the borrower, subject to the instrument securing the loan to be guaranteed and subject to any other exceptions approved, in writing, by the Agency.

(6) When required, the entire amount of the loan for working capital has been disbursed except in cases where the Agency has approved disbursement over an extended time.

(7) All other requirements of the Conditional Commitment for Guarantee have been met.

(8) Lien priorities are consistent with requirements of the Conditional Commitment for Guarantee.

(9) The loan proceeds have been disbursed for purposes and in amounts consistent with the Conditional Commitment for Guarantee and as specified on the application for the guaranteed loan. A copy of a detailed statement by the lender detailing the use of loan funds will be attached to support this certification.

(10) There has been no substantive adverse change in the borrower's financial condition nor any other adverse change in the borrower during the period of time from the Agency's issuance of the Conditional Commitment for Guarantee to issuance of the Loan Note Guarantee. The lender's certification must address all adverse changes of the borrower and the guarantors. For purposes of this paragraph (a)(10), the term borrower includes any parent, affiliate, or subsidiary of the borrower.

(11) All Federal, State, and local design and construction requirements have been met.

(12) The lender understands and will meet the requirements of the Debt Collection Act (31 U.S.C. Chapter 37).

(13) The lender would not make the loan without an Agency guarantee.

(b) The lender has executed and delivered the Lender's Agreement and closing report for the guaranteed loan